

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

CITY OF LINDEN

**ADMINISTRATIVE
CONSENT ORDER
NO. 2007-WW-09**

**TO: City of Linden
c/o Honorable Mayor and Council
P.O. Box 46, 131 South Main Street
Linden, IA 50146-0046**

I. SUMMARY

This administrative consent order (order) requires the City of Linden (City) to comply with the schedule contained in this order. The agreed upon schedule provides for the construction of a wastewater treatment system for this unsewered community. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this order should be directed to:

Relating to technical requirements:

Ted Petersen, Environmental Specialist
IDNR Field Office No. 5
401 S.W. 7th, Suite I
Des Moines, Iowa 50309-4611
Ph: 515/725-0274

Relating to legal requirements:

Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building, 502 E. 9th
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175 which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

The parties agree to the following Statement of Facts:

1. The City is a small unsewered community located in western Dallas County, north of Redfield and Highway 6. The 2000 census reported a population of 226 persons. Residences in the City use on-site septic tanks for treatment of wastewater from the homes. The on-site systems that are not followed by lateral fields discharge into a storm water collection system. The storm water collection system then discharges to an unnamed tributary to Mosquito Creek.

2. Field Office No. 5 completed a water sampling investigation of Mosquito Creek in Dallas County on May 15, 2006. Sample results identified a section of the creek with elevated concentrations of fecal coliform bacteria and E. Coli bacteria.

3. On August 21, 2006 Field Office No. 5 completed a follow-up water sampling investigation of Mosquito Creek in an effort to identify sources of coliform bacteria. Water samples were obtained from an unnamed tributary east of the City of Linden. This included samples from a subsurface tile outlet that discharged to the creek. Sample results indicated that the discharge from the tile contained elevated concentrations of fecal coliform bacteria, E. Coli bacteria, and ammonia nitrogen. The tile line discharge was from a storm water collection system used by the City.

4. Field Office No. 5 sent an October 4, 2006 Notice of Violation letter to the City concerning the discharge of septic tank effluent to the unnamed tributary to Mosquito Creek. The City was informed that the discharge of such untreated wastes was not permitted and was considered a prohibited discharge under Department rules. The City was advised that it needed to retain a registered engineer to evaluate the wastewater discharge and to submit a written plan with a schedule to bring the wastewater discharge into compliance with standard secondary treatment requirements.

5. By a letter dated January 4, 2007 the City informed Field Office No. 5 that it had retained an engineer. By a letter dated January 15, 2007 the City submitted an implementation schedule for a wastewater treatment system. The schedule was prepared by the City's engineer and provided for completion of a project to install a wastewater treatment facility. A project initiation meeting has been held for this project.

6. The implementation schedule set forth in Section V. of this order is agreed to as the appropriate schedule for installation of wastewater treatment facilities for the City. The first step in the schedule is for the submittal of a facility plan. The requirements for a facility plan are set out in Iowa Wastewater Facilities Design Standards chapter 11. The facility plan includes basic information concerning the project, presents design criteria and assumptions, and examines alternate projects with preliminary layouts and cost estimates. Financing methods giving anticipated charges for users and reviews

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organizational and staffing requirements are described in the facility plan. A conclusion, with the proposed project for a City's consideration and the official actions and procedures needed to implement the project, is included in the facility plan.

7. The schedule in Section V of this order requires plans and specifications to be submitted for the project. Plans and specifications are to be prepared in accordance with the approved facility plan. Plans and specifications are required to meet Department design standards for the particular type of wastewater treatment facility selected. Construction permit application schedules are required to be submitted along with the plans and specifications.

IV. CONCLUSIONS OF LAW

The parties agree to the following Conclusions of Law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. Iowa Code section 455B.183 prohibits the operation of a wastewater disposal system without a permit from the Department.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the construction and operation of waste disposal systems and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60- 69. Subrule 64.3(1) prohibits the operation of any waste disposal system without a permit. Subrule 62.1(1) prohibits the discharge of a pollutant without a permit. The City has been in violation of the above provisions due to its unauthorized discharges of sewage.

V. ORDER

The Department orders and the City consents to the following:

1. The City agrees to comply with the following implementation schedule for installation of wastewater treatment facilities for the City.

A. Submit a facility plan, including Department engineering design schedules A (General Information), F (Treatment Project Site Selection), and G (Treatment Project Design Data), to the Department by August 31, 2007.

B. Submit an application for an NPDES permit to the Department by August 31, 2007.

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C. Submit complete final plans and specifications meeting Department design standards and a complete application for a construction permit on the Department's forms for necessary facility improvements by August 1, 2008.

D. Start construction of wastewater treatment facilities by May 1, 2009.

E. Complete construction by December 31, 2009 and meet final effluent limits by January 31, 2010.

2. The City agrees to the payment of a stipulated penalty in the amount of \$100.00 per day that the interim deadlines in Paragraph V.1.A.- D. are not met. The City agrees to a payment of \$100.00 per day that the final deadline of December 31, 2009 in paragraph 1.E. above is not met. Payment is due within sixty days of the particular deadline that is not met.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with stipulated penalties for violation of the compliance schedule in this order.

The penalties stipulated to by the parties in this order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to the City for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violations in that not meeting the compliance schedule in this order is a fairly serious matter in view of past deficiencies. The penalties would also be related to future culpability in that the City has been put on notice by this order that stipulated penalties will result if the compliance schedule is not met.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection

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Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section V.1.A.- E. of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order.

as done
Leon
Page

Leon Page
~~FORREST~~ MAYOR-~~FORREST~~
CITY OF LINDEN

Dated this 15 day of
May, 2007.

Richard A. Leopold
RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of
May, 2007

City of Linden, Ted Petersen- Field Office No. 5, Terry Kirschenman- Wastewater Construction Section, Diana Hansen- Legal Services, U.S. EPA- Region 7, I.C.1.